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SERIAL NUMBER 07/007,720	FILING DATE 01/28/87	FIRST NAMED INVENTOR LAFFON	ATTORNEY DOCKET NO. PL-1006-US
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EXAMINER HIGEL, F

ART UNIT 121	PAPER NUMBER 9
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This is a communication from the U.S. Patent and Trademark Office, addressed to:
COMMISSIONER OF PATENTS AND TRADEMARKS

DATE MAILED: 03/16/89

This application has been examined Responsive to communication filed on 12/14/88 This action is made final.

A shortened statutory period for response to this action is set to expire THREE month(s) _____ days from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> |

Part II SUMMARY OF ACTION

1. Claims 1, 3, 4, AND 8 TO 10 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims 2 AND 5 TO 7 have been cancelled.

3. Claims _____ are allowed.

4. Claims 1, 3, 4, AND 8 TO 10 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. Formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable. not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been approved by the examiner. disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed on _____, has been approved. disapproved (see explanation).

12. Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other _____

EXAMINER'S ACTION

Claims 1 and 8 to 10 are rejected under 35 U.S.C. 103 as being unpatentable over Lafon I or II, of record, for the reasons given in the last Office action. Applicant's arguments are not deemed persuasive. The mere fact that the levorotatory compound has a better bioavailability which not absolutely predictable is not unexpected. Since the levorotatory and racemic mixtures thereof have the same utility - it is not surprising that one of the members of the racemic mixture alone has a far greater activity than the racemic mixture itself since usually the racemic mixture owes its activity to the member which exhibits the activity in question. Moreover while the separation of the racemic mixture into its isomer components may not be possible, one of ordinary skill would know that the individual components would be synthesized by known methods. These isomers could then be tested to see which isomer contributed the most to the observed pharmaceutical action or actions noted. Moreover, what is the difference between "confusion" and "memory disorders"? Also, mere reference to clinical trials without describing the procedures, methodology and dosages is not persuasive. The results of the these tests also were not shown. Mere conclusions are not enough.

Claims 3 and 4 are rejected under 35 U.S.C. 103 as being unpatentable over Lafon I or II, for the reasons

given in the last Office action and in the rejection of claims 1 and 8 to 10 over these reference, supra.

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 CFR 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Floyd D. Higel whose telephone number is (703) 557-5075.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 557-3920.

Higel:st

3/9/89

Floyd D. Higel
FLOYD D. HIGEL
PRIMARY EXAMINER
ART UNIT 121